RIGHTS STUFF

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Supreme Court Agrees to Hear Appeal in Race Discrimination Case Against Ball State

Maetta Vance was the only African American working in her department at Ball State University. She filed complaints with Ball State alleging that her co-workers engaged in offensive conduct, including using racial epithets, making references to the Ku Klux Klan, making veiled threats of physical harm and other unpleasant behavior. She eventually sued. The District Court granted Ball State its motion for summary judgment, meaning there was not enough evidence to go to trial. The Seventh Circuit Court of Appeals affirmed that decision last year, but now it will be up to the Supreme Court to decide.

The behavior that Vance said she was subjected to included the following:

-- a co-worker slapped her when they were having a discussion;
-- the co-worker later said "I'll do it again," apparently referring to the slap;
-- she heard that a co-worker, Connie McVicker, used the "n" word to refer to her and to an African American student; and
-- she heard that McVicker boasted about her family ties to the Ku Klux Klan.

She complained to the administration, which issued a statement saying "we will NOT tolerate this kind of language or resulting action in the workplace." The school also gave a written warning to McVicker. That same day, Vance said that McVicker referred to her as a "porch monkey." Ball State could not substantiate that claim.

Vance filed a formal complaint with the EEOC. She later amended the complaint, adding that a co-worker blocked her on the elevator, "stood there with her cart smiling" on the elevator, gave her "weird" looks and "mean-mugged" her. She also said that Ball State was retaliating against her for filing her original complaint, transferring her to a new job, denying her the chance to work overtime, assigning her diminished job duties and unfairly disciplining her.

While the EEOC case was pending in Court, Vance filed another internal grievance, saying that McVicker had said "payback" to her. In turn, McVicker said that Vance told her, "Just the beginning, bitch - you better watch your house." Additional complaints were filed by various individuals, none of which could be substantiated.

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ADA Does Not Require Store to Let Cashier Sit on the Job

Fern Strickland began working as a cashier at Eckerd's Holcomb Bridge store in 1992. In 2002, she transferred to the Jones Bridge store, where she continued to work as a cashier. In 2007, Rite Aid purchased the Eckerd Corporation, and Strickland's job continued unchanged.

In 2001, Strickland was diagnosed with osteoarthritis in both of her knees. This made it difficult for her to walk without a cane or to stand for very long. She began sitting intermittenly on the job to relieve the pain in her knees. She had her right knee replaced in 2006, but her pain persisted and she continued to use a chair at work.

In 2008, Larry Frisbie became the district manager. A few months later, he noticed Strickland sitting at the cash register. He was surprised, because Rite Aid does not allow cashiers to sit while they are on duty. If they don't have customers, they are supposed to be stocking, cleaning and performing other duties necessary in keeping a store running. He asked her why she was sitting, and she said she had given the store a doctor's note saying she had to use a chair at work. He found the note and decided it was too vague. He asked for more information from her doctor about her restrictions and received a letter saying she "requires a chair at checkout and is limited to standing 15 minutes or less at a time due to osteoarthritis." He also asked for a supervisor to review surveillance tapes to see how long Strickland was "sitting idly" while on the job. Four days of tapes showed she was sitting down for about half of her shifts.

Frisbie met with Strickland to discuss her job and the results of the video viewing. He asked her how long she would need a sitting accommodation, and she said she would likely need it "forever." Shortly after this meeting, Strickland provided a new note from her doctor saying she needed to "sit at least 30 minutes per hour worked throughout the work day." But the note did not provide a rationale for the half-time restriction. The store asked the doctor to review Strickland's job description and determine if she was medically capable of performing her essential job duties but never received a reply.

Rite Aid determined that it could not provide Strickland with the accommodation she had requested - permission to sit about half of each shift - and terminated her employment. She filed a complaint of disability discrimination in employment under the Americans with Disabilities Act (ADA). The Equal Employment Opportunity Commission sued on her behalf, and lost.

The Court noted that the Americans with Disabilities Act says that a person with a disability is qualified "if she can perform the essential functions of her job with or without a reasonable accommodation." The Court said that there was no question that the cashier job had significant physical requirements, including uploading merchandise, stocking shelves, building displays and cleaning. The job description requires cashiers to be able to stand for long periods of time, regularly walk about and occasionally lift and carry up to 50 pounds. Cashiers spend most of their time walking customers to departments, cleaning, stocking and adjusting prices, not standing or sitting behind the cash register.

The Court said that Strickland's requested accommodation - sitting for half of the day - did not enable her to do all of the essential functions of her job. "In fact, the sitting accommodation would simply eliminate, rather than enable Strickland to perform, many of the essential functions of the cashier job. It is therefore per se unreasonable."

The EEOC argued that since the store had allowed Strickland to sit intermittenly during her shift for eight years, it had to continue to allow her to do so. The Court noted that Rite Aid had taken over the store only three years earlier and said the following "In any case, it is well-settled that an employer's previous willingness to provide a certain accommodation does not establish that the

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Customer Preference is Not a Defense to Discrimination

Rita Williams began working as a security officer for G4S Secure Solutions in 2006. G4S is a staffing company that provides security personnel to its clients. The next year, she became a customer protection officer with the company, carrying a gun while on duty and earning more money.

In 2008, Williams attended a training session at Jai Medical Center, one of G4S's clients. She thought this could lead to a regular, full-time job at Jai, something she desired because of the pay, hours and locations.

During the training session, she called her supervisor, Bernard Davis, and told him she had heard that Jai didn't want female security officers. Davis told her to leave and go to another work site for her shift. He said he had forgotten not to send women to Jai.

When Williams sued, alleging sex discrimination, G4S said they had not discriminated. Jai had. They argued that they could not be responsible for Jai's actions.

The Court, based on ample precedent, rejected this defense. G4S knowingly honored discriminatory assignments from Jai. Customer preferences do not excuse an employer's intentional discrimination. The Court said, "Under Defendant's reasoning, it would be perfectly permissible for G4S to provide security services to white supremacist organizations even if it is only able to assign white employees to perform such services because its clients refuse to accept African-American employees, as long as G4S doesn't own the property upon which its employees work. In view of the ever-growing number of contingent workers in this country, Defendant's argument - if accepted - would render Title VII and other employment discrimination laws meaningless."

The case is Williams v. G4S secure Solutions (USA), Inc. 2012 WL 1669848 (D.MD. 2012).

ADA Does Not Require Accessible Taxicabs

Several people with disabilities sued the New York City Taxi and Limousine Corporation (TLC), alleging that because very few of the City's cabs are accessible to people who use wheelchairs, the City Commission was violating the Americans with Disabilities Act (ADA). The District Court agreed, but the Court of Appeals overturned their ruling.

All taxis in New York City are licensed and regulated by the TLC. There are 13,237 licensed cabs in the City, of which 233 are accessible to people who use wheelchairs. A study showed that the chance of hailing any taxi in Manhattan within ten minutes is 87.33%. The chance of hailing an accessible taxi within ten minutes is 3.31%.

The ADA explicitly exempts taxi providers from having to purchase or lease accessible vehicles. So the plaintiffs in this case sued the TLC, arguing that the ADA required such a licensing authority to make sure that more cabs are accessible. The Court of Appeals disagreed. It said, quoting another case, that "licensing of non-accessible private establishments did not deny access to services, aids and programs *provided by the City* under licensing or contractual arrangements." (Italics in original.) If TLC required that cab companies not hire people with disabilities in order to get a NYC cab medallion, it would be violating the ADA. But it is not violating the ADA when it doesn't require cab companies to do more than the ADA requires them to do. As the Court said, "The TLC's licenses do not bar taxi owners from operating accessible vehicles . . . no doubt, more such taxis would be on the streets if the TLC required more of them to be accessible. But the TLC's failure to use its regulatory authority does not amount to discrimination within the meaning of the ADA or its regulations." The Court said that the ADA is a broad law, but it "is not without limits, and limits are found in the Attorney General's regulations."

The case is Noel v. New York City Taxi and Limousine Commission, 2012 WL 2437954 (2nd Cir. Ct. App. 2012). If you have questions about the ADA, please contact the BHRC.

Ball State

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The Court of Appeals found that the people who had allegedly harassed Vance were not her supervisors, as they did not have the power to directly affect the terms and conditions of her employment, such as the power to hire, fire, demote, promote, transfer or discipline her. Other courts have held that if someone simply has the power to direct an employee's daily activities, then they are legally supervisors, but the Seventh Circuit declined to go that far.

The Court found that the employee who "mean-mugged" Vance had not created a hostile work environment. "Making an ugly face at someone and staring, while not the most mature thing to do, falls short of the kind of conduct that might constitute a hostile work environment claim."

The Court held that even if Vance's allegations against her co-workers satisfied the requirements of a hostile work environment claim, Ball State still won because there was no basis on which to hold the University liable. The Court said that once Ball State had become aware of the problems, it took prompt and appropriate corrective action reasonably likely to keep the harassment from continuing. The Court said that the "catering department was undoubtedly an unpleasant place for Vance between 2005 and 2007. Yet the record reflects that Ball State promptly investigated each complaint and took appropriate action, based on the results of the investigation and the seriousness of the allegations."

The Court said that Vance's new job did not constitute retaliation. She applied for the job, and while it required her to do some menial tasks, she also was required to do a number of more challenging tasks. In addition, her pay went up with the new job.

The case is Vance v. Ball State University, 646 F. 3d 461 (7th Cir. 2011). The question the Supreme Court will have to decide was whether these co-workers were legally supervisors, meaning that Ball State could be liable for their actions, regardless of what steps the university had taken to correct the problem.

If you have questions about your rights and responsibilities under fair employment laws, please contact the BHRC.

ADA Does Not Require Store to Let Cashier Sit on Job

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accommodation is reasonable or required."

The EEOC argued that Rite Aid did not discuss alternative accommodations with Strickland that might have enabled her to do all of the duties of her job. The Court said the employer has no duty to engage in this interactive process when the employee has failed to identify a reasonable accommodation. Neither Strickland nor the EEOC had ever suggested accommodations that would have enabled her to perform the essential functions of her job. And Rite Aid did meet with Strickland to discuss her job and possible accommodations.

The Court noted that this store has only one or two cashiers and a supervisor on duty during any given shift. When one cashier can't do all of her duties, it means the other cashier has to work much harder. Because of Strickland's limitations, the store was struggling to meet its goals.

The EEOC argued that Strickland's requested accommodation was cost-free to Rite Aide because she brought her own chair to work. It said that Rite Aide is a large corporation with more than 80,000 employees and thus could easily absorb any impact associated with providing her with accommodations. The Court instead focused on the individual store where Strickland worked and noted her inability to do her job affected productivity and morale at that store. The case is Equal Employment Opportunity Commission v. Eckerd Corp. d/b/a Rite Aid, 2012 WL 2726766 (N.D. GA 2012).